

HIGHER EDUCATION

SECRETARY OF HIGHER EDUCATION

**Rules and Procedures for Implementation of the Higher Education Equipment Leasing
Fund Act**

Proposed New Rules: N.J.A.C. 9A:14

Authorized By: Rochelle Hendricks, Secretary of Higher Education.

Authority: N.J.S.A. 18A:72A-40 and P.L. 1993, c. 136 and P.L. 2012, c. 42.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2013-018.

Submit comments by March 23, 2013 to:

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The agency proposal follows:

Summary

On June 5, 1993, the Higher Education Equipment Leasing Fund Act (the “Act”) (P.L. 1993 c. 136) was enacted, establishing the Higher Education Equipment Leasing Fund

(“equipment leasing fund” or “leasing fund”) in the New Jersey Educational Facilities Authority (Authority). The Act authorizes the Authority to issue bonds to finance the purchase of scientific, engineering, technical, computer, communications, and instructional equipment for lease to New Jersey public and independent institutions of higher education and to enter into lease agreements with institutions to finance the acquisition of such equipment by the institutions.

Recent amendments to the Act in 2012 (the Amending Act) reflect the replacement of the New Jersey Commission on Higher Education with the Secretary of Higher Education as the State entity statutorily responsible for the coordination and planning of higher education in New Jersey. The Act provides for the issuance of bonds by the Authority with a maximum amount outstanding at any one time not to exceed \$100 million. As bonds are paid off, new bonding capacity is created. The Secretary of Higher Education in consultation with the Authority promulgates the implementing rules, which specify approval processes for institutional purchases supported by leasing fund and ensure the moneys are distributed consistent with the intent of the Act. Approvals for equipment purchases using the initial \$100 million of bonds have been issued. Some of the bonds have now been paid off, thereby resulting in the ability to issue additional bonds to fund new purchases. The issuance of additional bonds is subject to the approval of the State Treasurer.

The Secretary of Higher Education is promulgating these rules to provide for the allocation of money available, if the State Treasurer authorizes new bonds as a result of the retirement of bonds previously issued by the Authority. The rules governing the implementation of the equipment leasing fund expired in November 2009, and the Secretary of Higher Education

is proposing the rules set forth below pursuant to N.J.S.A. 52:14B-1 et seq. to implement the provisions of the Act.

The proposed new rules for the Higher Education Equipment Leasing Fund are organized as follows:

N.J.A.C. 9A:14-1.1 sets forth the chapter's purpose and authority.

N.J.A.C. 9A:14-1.2 provides the definitions pertinent to the rules.

N.J.A.C. 9A:14-1.3 delineates the process for applying for approval of a higher education equipment purchase and specifies the information that must be included in applications.

N.J.A.C. 9A:14-1.4 presents the application review and approval process, including the criteria the Secretary will use in reviewing the applications.

N.J.A.C. 9A:14-1.5 delineates the authorization process.

N.J.A.C. 9A:14-1.6 specifies when the Secretary may reduce or cancel an approved purchase amount.

N.J.A.C. 9A:14-1.7 describes how the principal and interest on bonds will be paid and specifies action that will be taken if an institution fails to pay the appropriate amounts due to the Authority.

N.J.A.C. 9A:14-1.8 summarizes reporting requirements.

As the Secretary has provided a 60-day public comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

More than 440,000 students are enrolled in New Jersey colleges and universities. The rapid technological changes occurring throughout the world have a considerable impact on the quality of teaching, learning, and research at colleges and universities. The current inventory of instructional and research equipment at the colleges and universities within the State is aging both chronologically and technologically, and much of it has been rendered obsolete. To be prepared for careers in a world of rapidly changing technology, New Jersey students must be educated using state-of-the-art instructional equipment. The equipment leasing fund supports the instructional, computing, or research requirements and helps meet emerging technology needs. All public colleges and universities and the independent institutions eligible to receive public funds under the Independent College and University Assistance Act are eligible to purchase equipment through the fund. Having rules in place if and when the fund is renewed will expedite institutional purchases with leasing fund moneys.

Economic Impact

Higher education plays a vital role in the economic development of the State and the nation by providing education and training for the workforce of the future by advancing science and technology through research. New Jersey has a large concentration of high-technology industry and research facilities and is home to some of the world's most productive corporations. The leasing fund helps New Jersey institutions meet educational demands, which helps the State compete in the global marketplace. The rules prescribe how institutions may obtain leasing fund moneys for equipment acquisitions.

Federal Standards Statement

The proposed new rules do not require a Federal standards analysis under Executive Order No. 27 (1994) because the Higher Education Equipment Leasing Fund Act was established by New Jersey legislation, is wholly supported by State appropriations, and is not subject to any Federal requirements or standards.

Jobs Impact

The proposed new rules governing the equipment leasing fund govern only the process eligible institutions must follow to receive approval for projects supported with leasing fund moneys. There will be short-term and long-term job increases associated with funded projects. The proposed new rules will not result in the loss of any jobs.

Agriculture Industry Impact

The proposed new rules will have no impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules do not apply to small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules pertain strictly to public and publicly funded independent colleges and universities in New Jersey, none of which qualify as a small business.

Housing Affordability Impact Analysis

The proposed new rules do not require a housing affordability analysis because the rules govern the implementation of the equipment leasing fund and there is an extreme unlikelihood that the new rules will evoke a change in the average costs associated with housing.

Smart Growth Development Impact Analysis

The Secretary believes there is an extreme unlikelihood that the proposed new rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rules govern the implementation of the Higher Education Equipment Leasing Fund Act.

Full text of the proposed new rules follows:

CHAPTER 14

RULES AND PROCEDURES FOR IMPLEMENTATION OF THE HIGHER EDUCATION EQUIPMENT LEASING FUND ACT

SUBCHAPTER 1. GENERAL PROVISIONS

9A:14-1.1 Purpose and authority

This chapter is promulgated by the Secretary of Higher Education to implement the Higher Education Equipment Leasing Fund Act, P.L. 1993, c. 136, as amended by P.L. 2012, c. 42.

9A:14-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Act" means the New Jersey Educational Facilities Authority Act, N.J.S.A. 18A:72A-1 et seq.

"Amending Act" means P.L. 2012, c. 42, the law that supplements and amends the Act.

"Authority" means the New Jersey Educational Facilities Authority or any board, body, commission, department, or officer succeeding to the principal functions thereof or to whom the powers conferred upon the Authority shall be given by law.

"Bond" means a bond or note of the Authority issued pursuant to the authority granted by the Act.

"Cost-effectiveness" means the degree to which a project produces a positive economic analysis when considering the construction expenses, operating, and maintenance expenses, compared to the project's resultant facilities and/or equipment, the life span of the facilities and/or equipment, facility usage and capacity, user productivity, and, where appropriate, such attributes as aesthetics, historic preservation, security, and safety.

"Equipment" means any property consisting of, or relating to, scientific, engineering, technical, computer, communications, or instructional equipment for use by institutions.

"Equipment leasing fund" means the Higher Education Equipment Leasing Fund as created by the Act.

"Institution" means a public or private institution of higher education that is eligible to receive State aid.

"Lease agreement" means any lease agreement by and between the Authority and any participating institution entered into pursuant to the Act.

"Secretary" means the Secretary of Higher Education.

9A:14-1.3 Process for approval of a higher education equipment purchase

(a) Following approval by its governing board, an institution of higher education may apply to the Secretary for approval of a higher education equipment purchase(s) to be financed by the equipment leasing fund. The institution's application shall include the following:

1. A copy of the institution's governing board resolution approving the institution's equipment purchase and committing to support the annual operating costs and maintenance requirements for any new equipment;

2. A brief description of the process used to generate the application for approval of the proposed purchase;

3. A description of how the proposed purchase relates to the current institutional mission and plans;

4. The program(s) or function(s) to be served by the equipment, including the specific educational objectives to be met;

5. The equipment and number of units to be purchased;

6. The estimated cost of the equipment to be purchased;

7. The useful life of the equipment either by reference to the Internal Revenue Service's Class Life Asset Description Range System set forth in Revenue Procedure 87-56, as amended, supplemented, or superseded, or by appraisal of any independent engineering or accounting firm as appropriate;

8. The estimated timetable for the acquisition and installation of the equipment;

9. Identification of all sources of revenue to be used to pay the institution's annual share of principal and interest on bonds issued to acquire equipment for use by the institution;

10. Certification by the institution that the project will comply with all applicable rules, codes, statutes, and government guidelines;

11. Any additional information the institution deems necessary to demonstrate how the institution's proposed purchase meets the objectives identified in N.J.A.C. 9A:14-1.4(b); and

12. Any other information as may be required by the Secretary on a case-by-case basis and relating to a specific application.

(b) No application shall be for an amount totaling less than \$500,000, unless it is for the final portion of an institution's allocation, or the submission of an application for such smaller amount has been authorized by the Secretary.

(c) Descriptions of the equipment submitted pursuant to (a)5 above may be illustrative and the equipment to be purchased may be changed as a result of the bidding processes, advances in technology, or for other reasons, provided that the new equipment has been approved by the institution's governing board and by the Secretary.

(d) Applications for purchase approval shall be submitted in a format provided by the Secretary.

9A:14-1.4 Application review and approval process

(a) The Secretary shall conduct a review of the applications. Such applications will be reviewed based on:

1. The completed application bearing the earliest submission date;

2. A competitive application process whereby all applications will be submitted by a date certain and will be evaluated to determine which applications are the most qualified to receive funding.

(b) In determining whether a proposed higher education equipment purchase shall be approved, the Secretary shall consider the degree to which the proposed purchase supports the following objectives:

1. Advancement of student education in the State of New Jersey;
2. Improvement and expansion of educational opportunities for students;
3. Promotion of academic research excellence, workforce readiness, and the enhancement of the State's academic and economic competitiveness and prosperity by assisting in the production of a highly skilled workforce;
4. Promotion of innovation and improvement in the delivery of higher education;
5. Advancement of study at all levels in science, technology, engineering, and mathematics education;
6. Consistency with the institution's educational mission;
7. The cost-effectiveness of the purchase;
8. Consistency of the project with the State's goals and priorities for development and redevelopment, including the promotion of industry clusters, job and business opportunities in areas designated by the State for growth, transportation choice and efficient mobility of goods and people, and promotion of access to opportunity for all New Jersey residents; and
9. Whether it serves the best interests of higher education in the State as a whole.

9A:14-1.5 Authorization process

(a) The Secretary shall establish a review committee comprised of representation from the Office of the Secretary of Higher Education, the New Jersey Educational Facilities Authority, the New Jersey Schools Development Authority, the New Jersey Economic Development Authority, and an external advisor with technical expertise to evaluate higher education equipment purchase applications and make recommendations on funding.

- (b) The Secretary shall examine the recommendations of the review committee and shall, via a written certification, provide preliminary approval or disapproval of the purchase, pursuant to N.J.A.C. 9A:14-1.4(b), and the amount of the approval.
- (c) The Secretary shall forward to the Authority a copy of the institution's application and a copy of the written certification of such approval, including the amount of the grant. The Authority shall thereafter submit a copy of the proposed lease agreement or lease information in connection with the purchase of equipment preliminarily approved by the Secretary to the Legislature Joint Budget Oversight Committee for review. The Legislature Joint Budget Oversight Committee shall approve or disapprove each lease agreement within 10 working days of receipt of the lease information or the lease agreement shall be deemed approved by the Legislature Joint Budget Oversight Committee and by the Secretary.
- (d) The Authority shall not enter into a lease agreement with an institution of higher education without the review and approval of the Legislature Joint Budget Oversight Committee.
- (e) Lease agreements with institutions for the lease-purchase of equipment approved by the Secretary shall require the respective institutions to pay to the Authority 25 percent of the principal and interest on the bonds to be issued to finance the equipment purchase for the respective institutions.
- (f) The Authority shall not issue bonds to finance the equipment purchase with terms exceeding the useful life of the equipment to be purchased and in no case exceeding 10 years.
- (g) No bonds shall be issued by the Authority without the prior written consent of the State Treasurer.
- (h) Proceeds from the sale of bonds shall cover the cost of bond issuance and administrative costs of the program.

(i) Any purchase of equipment by an institution shall be in the name of the Authority. The Authority shall hold title to the equipment until the bonds issued to finance the purchases have been repaid whereupon title shall be transferred to the respective institutions at their cost.

(j) Each institution that receives approval for the purchase of higher education equipment shall provide such information as the Secretary may request regarding the status of the equipment purchase.

9A:14-1.6 Cancellation or reduction in approved amounts

(a) The Secretary may reduce or cancel entirely any balance in the amounts authorized if the amounts are not committed within 18 months of the allocations made by the Secretary. Funds will be considered committed when a lease agreement has been entered into between an institution and the Authority.

(b) No reduction in the balance shall be made pursuant to (a) above if:

1. The request for approval has been received by the Secretary within 18 months of the allocation;
2. The facility in which the equipment will be housed is under construction or renovation;
3. Delays are the result of Federal, State, or local governmental approvals or regulatory requirements not attributable to the institution; or
4. Other compelling and documentable reasons exist as determined by the Secretary.

(c) An institution's inability to secure the necessary funds to pay the 25 percent principal and interest payments on bonds issued to finance equipment for such institution shall not constitute good cause for not committing funds as required in (b) above.

9A:14-1.7 Payment of principal and interest

(a) Each institution shall pay the Authority, or the bond trustee if so directed by the Authority, 25 percent of the principal and interest on bonds deemed issued to acquire equipment for the institution and in accordance with its lease agreement.

(b) Upon receipt of funds under (a) above, the Authority, or the bond trustee if so directed by the Authority, shall remit all such payments immediately to the State Treasurer.

(c) If an institution fails or is unable to pay to the Authority in full, when due, any such obligation of an institution to the Authority, an amount sufficient to satisfy the deficiency shall be retained by the State Treasurer from State aid or an appropriation payable to the institution. As used in this subsection, "obligation of an institution" means any amount payable by the institution under a lease agreement to meet principal and interest on the bonds issued to acquire equipment for the institution under this program. The Authority shall notify the State Treasurer of the amount to be retained to satisfy the obligation of each institution. A copy of such notification shall be submitted to Secretary.

9A:14-1.8 Reporting requirements

The Authority shall report its equipment purchases to the Secretary once in each year in which equipment purchases are made. The Secretary shall then report to the Governor and the Legislature on equipment purchases that have been approved by the Secretary and financed through this chapter.